THE RATIFICATION OF THE FIFTEENTH AMENDMENT IN INDIANA

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[The writer of this paper has written mainly from the original sources a detailed account of the ratification of the Fifteenth Amendment in Indiana. In searching for material on this subject he has found the files of the Indianapolis *Journal* in the University Library and the State Library, and the Indianapolis *Sentinel*, found in the same libraries, of much value. The *Brevier Reports*, the *Senate* and *House Journals* also proved very valuable. Not all the questions that came up in connection with this work have been satisfactorily answered. In some few cases it was found impossible to make all the figures given in the sources work in harmony. Yet the main figures as given in this paper may be relied upon. There may also be some difference of opinion in regard to the question of the constitutionality of the ratification. Viewing the whole question in the light of the past and the present, the writer is of the the opinion that as far as the letter of the law is concerned—and law is usually interpreted in this way—the Amendment was not passed. The writer received much valuable assistance, for which he is truly grateful, from Dr. James A. Woodburn, Dr. E. V. Shockley, and Dr. Logan Esarey.]

I. ATTITUDE OF INDIANA MEMBERS OF CONGRESS TOWARDS THE FIFTEENTH AMENDMENT

One of the main questions before Congress during the latter part of the Civil War and the Reconstruction period was how to secure adequate civil and political rights for the freedmen. Charles Sumner, at the close of the war, favored the enfranchising of the negroes and the disfranchising of all persons of the South who had taken part in the rebellion.[1] It was proposed in Congress to exclude southern representatives until their States should allow negro suffrage.[2]

Oliver P. Morton, then Governor of Indiana, did not think it advisable to adopt this policy. His attitude on that question is plainly set forth in a speech delivered at Richmond, Indiana, September 29, 1865.[3] I shall briefly review that speech, to give the reader a clear idea of his views at that time. In regard to the question of allowing the freedmen of the Southern States to vote, Mr. Morton said: "While I admit the equal rights of all men, and acknowledge that in time all men will have the right to vote without distinction of color

[1]Charles Sumner, *Works*, X, pp. 21 ff.
[2]Indianapolis *Journal*, Oct. 2, 1865, p. 5.
[3]*Ibid.*

or race, I yet believe that in the case of four million slaves just freed from bondage, there should be a period of probation and preparation before they are brought to the exercise of political power."[4] He claimed that to say that those men were qualified to vote would be proslavery argument, "paying the highest compliment to the institution of slavery."[5]

Mr. Morton gave as another reason for not wanting to admit the negro to power, that it would be inconsistent for Indiana to say that the negro must vote in the South, when under her own Constitution then in force he was much discriminated against.[6] Mr. Morton said further, that if the negro were enfranchised and the South should send negro Senators and Representatives to Congress, "I have no doubt you will find men in the North who will be willing to sit beside them, and will not think themselves degraded by doing so. I have nothing to say to this. I am simply discussing the political effect of this."[7] He also believed that if negro governments were set up in the South, white immigration from Europe and the North would stop, and an "exodus" of southern whites would begin.

The question of negro suffrage, according to Mr. Morton's opinion, might be solved by giving the negro political rights after "ten, fifteen, or twenty" years. By that time, he believed, they would be in the minority in the South, owing to immigration from the North and from Europe. Since the negro could gain in population only by natural increase, he felt certain that the white population would soon be in the majority in every State of the South. In this Richmond speech, Mr. Morton proposed reducing the representation in Congress in proportion to the number of adult males not having the right of suffrage. This, he believed, would induce the South to enfranchise the negro to increase its representation.[8]

In less than two years after Governor Morton had delivered his Richmond speech, his views in regard to negro suffrage had changed. This was after the South had rejected the Fourteenth Amendment.[9]

[4]Indianapolis *Journal,* Oct. 2, 1865.

[5]*Ibid.*

[6]Indiana's second Constitution, ratified in 1851, reads (Art. XIII, sec. 1): "No negro or mulatto shall come into or settle in the State, after the adoption of this Constitution." Section 2 of the same article says: "All contracts made with any negro or mulatto coming into the State, contrary to the provisions of the foregoing section, shall be void; and any person who shall employ such negro or mulatto, or otherwise encourage him to remain in the State, shall be fined in any sum not less than ten dollars, nor more than five hundred dollars."

[7]Indianapolis *Journal,* Oct. 2, 1865, p. 5.

[8]Indianapolis *Journal,* Oct. 2, 1865, p. 5.

[9]"Before the first day of January, 1867, all of these [Southern States] except three had rejected it, * * * and these three followed the same course a little later." Burgess, *Reconstruction and the Constitution,* p. 106.

His opinion at that time is expressed in his message of January 11, 1867, to the General Assembly of Indiana. He said in part: "Ordinarily, when the country is in a normal condition, the subject of suffrage is absolutely within the control of the several States. . . . But if a State government shall fall into anarchy, or be destroyed by rebellion, and it is found clearly and unmistakably that a new one cannot be enacted and successfully maintained without conferring the right of suffrage on a race or body of men to whom it has been denied by the laws of the State, it would clearly be within the power of Congress to confer the right for that purpose, upon the principle that it can employ the means necessary to the performance of a required duty. . . . . The power which I claim for Congress is vast and dangerous, and should be exercised with deliberation, and only in case of clear necessity, as it trenches directly upon the general theory and structure of the government, yet it unquestionably exists."[10] It would not be safe to say from this message that Mr. Morton was enthusiastically in favor of enfranchising the negro, but we may safely say that he considered such action on the part of Congress a possible solution.

When later Mr. Morton was one of the main advocates of negro suffrage, he was in advance of the rank and file of the Republican party. The party view on this question in 1868 is expressed in the Republican national platform of that year. Section two of that platform reads: "The guarantee by Congress of equal suffrage to all loyal men of the South was demanded by every consideration of public safety, of gratitude, and of justice, and must be maintained; while the question of suffrage of all loyal States properly belongs to the people of those loyal States."[11] When the Fifteenth Amendment was being discussed in Congress, Senator Thomas A. Hendricks accused Mr. Morton (then Senator) of inconsistency on the question of suffrage.[12] At a previous time both Senator Hendricks and Senator Dixon of Connecticut had said that, according to the Chicago platform, the Republican party could take no action on the question of negro suffrage, since it had committed itself to the doctrine that in the loyal States suffrage should be left to the States. Mr. Morton had answered this by saying that the resolution merely stated the constitutional position of the party, as the Constitution then stood; but it certainly did not mean to say that at no time would the party propose to change it on that subject.[13]

[10] *House Journal*, 1867, p. 50 (Jan. 11).
[11] *Globe*, 3d Session, 40th Congress, p. 673.
[12] *Ibid.*, p. 1314.
[13] *Ibid.*, p. 861.

Mr. Morton took an active part in the debates on the Fifteenth Amendment. He favored it because he felt that negro suffrage was necessary for establishing loyal Republican government in the South, and because, as he believed, it would afford adequate protection for the negroes. This latter reason is brought out in his speech in the Senate on February 8, 1869. "It is admitted," he said, "by all these Senators [Hendricks of Indiana, Davis of Kentucky, and Salisbury of Delaware] at the same time that the negro is a kindly race; it is not a savage race; and it is a Christian race in this country, as much as the white race; but they say that they are of inferior intellect, not capable of the same development and progress as the white race. Suppose we grant all this; I ask if it is not a reason why these men should have the ballot put into their hands by which they may protect and take care of themselves? . . . . The weak require to be furnished with the means of protection. In this country there is no protection for civil and political rights outside of the ballot."[14]

Mr. Hendricks, on the other hand, opposed the amendment. He believed, as stated above, that the Republican party was pledged to leave the question of suffrage to the loyal States. He gave as another reason for opposing it that he was "in favor of men voting in this country who belong to the white race and conduct themselves properly."[15] A third reason for opposing it was that the party in the majority was favoring the enfranchising of the negro for political gain. On February 17, while speaking on the suffrage amendment, he said: "You care for your own purposes. What are they? . . . . To throw a political power in favor of your party that you do not now possess, to secure a vote that the people will not give you."[16]

It appears that Mr. Hendricks felt, probably as soon as the Fifteenth Amendment was introduced, that it would pass in spite of the united opposition of the Democrats in Congress. In a speech in the Senate on January 28,[17] he said that the amendment, if proposed, ought to be ratified by the most democratic way under the present Constitution and laws. Since universal suffrage was not a question at the time the present legislatures were elected, ratification ought to be postponed till the next legislatures, when the people would have had a chance to express themselves. He was not

[14] *Ibid.*, p. 990.
[15] *Ibid.*, p. 990.
[16] *Ibid.*, p. 1314.
[17] *Ibid.*, p. 673.

sure that Congress had the right to place this restriction on the State legislatures. By February 17, he believed that Congress did have the right to make such a restriction. The amendment was then before the Senate in the following form: "The right of the citizens of the United States to vote and hold office shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."[18] To this Mr. Hendricks offered the following amendment: "That the foregoing amendment shall be submitted for ratification to the legislatures of the several States, the most numerous branch of which shall be chosen next after the passage of the resolution."[19] An amendment to the effect that both branches of the legislature were to be elected after the passage of the resolution had been voted down at a previous time.[20] Mr. Hendricks's motion was voted down by a vote of 40 to 12. Had this amendment been accepted Indiana history in relation to the amendment would probably be different from what it is.

The amendment in the form given above was not all that Mr. Morton wanted. He said that he would vote for it if none better could be had. His reason for dissatisfaction with it was that negroes were saved from denial of the right to vote or hold office on only three grounds—"race, color, or previous condition of servitude"—, but might be denied these on any other grounds.[21] This would permit the States to require educational or property qualifications; or they might even exclude the negro on the ground of "being naturally inferior in point of intellect and disqualified to take part in the administration of government."[22] Subsequent events have abundantly justified these fears. Mr. Morton believed that the amendment ought to be so drawn up as to make such action impossible, and make suffrage uniform in all the States.[23]

Five days later, February 9, Senator Morton introduced a resolution to amend the Constitution so as to give Congress the power to prescribe the manner of choosing the presidential electors. This would take that power away from the State legislatures. The first vote on this amendment was 27 yeas, 29 nays. The amendment was

[18] *Globe,* 3d Session, 40th Congress, p. 1311. This is the form in which the amendment finally passed. The clause: "Congress shall have the power to enforce this article by appropriate legislation" also belongs to the finished enactment.

[19] *Globe,* 3d Session, 40th Congress, p. 1311.

[20] *Ibid.,* p. 1311.

[21] *Ibid.,* p. 863 (Feb. 4, 1869).

[22] *Ibid.*

[23] *Ibid.*

renewed on the same day, and passed by a vote of 37 to 19; but it was voted down in the House.

It was a hard matter for the two houses of Congress to agree on the form of the Fifteenth Amendment. A conference committee was called into being to smooth over the main points of difference. As recommended by that committee, it was not what many of its supporters believed it should be; but they wanted an amendment giving the right of suffrage to the negro passed before the close of the session, and had to take what they could get. On February 17 Mr. Morton said in the Senate: "Every day that is now lost in passing this amendment through Congress endangers its adoption by the States. . . . . I hope therefore that no other measure will be allowed to be considered until the constitutional amendment is disposed of."[24]

While Senator Morton was anxious to hurry the amendment through Congress before the end of the session, Senator Hendricks was just as anxious to keep it from passing. He felt that much might be gained and nothing lost by delay. He believed that two-thirds of the newly-elected House would not favor such an amendment, after their constituents had had no opportunity to express their sentiments on that subject.[25]

The vote on the report of the Conference Committee was taken in the House on February 25. It resulted in 144 yeas, 44 nays, and not voting 35.[26] The vote in the Senate on the following day showed yeas 39, nays 13, absent 14.[27] The Speaker of the House signed the proposed amendment on February 26.

[24] *Globe*, 3d Session, 40th Congress, pp. 1631-3 (Feb. 26, 1869).
[25] *Ibid.*, p. 1563.
[26] *Ibid.*, p. 1641.
[27] *Ibid.*, p. 1641. Indiana was represented in the Senate by Thomas A. Hendricks (Dem.) and Oliver P. Morton (Rep.). In the House she was represented by the following Democrats: W. S. Holman (Aurora), Michael C. Kerr (New Albany), William E. Niblack (Vincennes ; and the following Republicans: John Coburn (Indianapolis), Schuyler Colfax (South Bend), Morton C. Hunter (Bloomington), George W. Julian (Centreville), Godlove S. Orth (Lafayette), John P. C. Shanks (Jay County), Henry D. Washburn (Clinton), and William Williams (Warsaw). I have practically confined myself to the attitude of the two Senators. This is because they may be considered the leaders of their respective parties. Senator Morton, elected to the Senate in January, 1867, was somewhat in advance of the ideas of the majority of his party, while Senator Hendricks voiced the sentiment of the vast majority of the Democrats of Indiana. I have said nothing about the part the members of the House took on this question for the reason that they took little part in the discussion, and when they did it was along party lines. George W. Julian made known his views on the negro question in general by his resolution to the Judiciary Committee demanding an inquiry regarding the report that slavery still existed in Kentucky. His remarks show that he was ready to insist on what he considered the negro's rights

II. THE FIFTEENTH AMENDMENT BEFORE THE REGULAR SESSION OF THE GENERAL ASSEMBLY OF INDIANA, 1869

Before taking up the proceedings over the Fifteenth Amendment, I shall consider briefly the Thirteenth and Fourteenth Amendments in the General Assembly of Indiana. This may give the reader a better understanding of the action on the Fifteenth Amendment.

Governor Morton, on February 6, 1865, sent the Thirteenth Amendment to the Senate;[28] on the following day he sent it to the House.[29] It passed the Senate on February 10, by a vote of 26 to 22;[30] the House, on February 13, by a vote of 56 to 29.[31]

Paris C. Dunning in the Senate claimed there had been a little program to break up that body and thus prevent the passage of the amendment.[32] This assertion may have been based partly on the absence, according to the *Brevier Reports,* of a number of Democrats. Mr. Bennett claimed there was fair evidence that the Democrats intended to bolt.[33]

The Fourteenth Amendment[34] was taken up by the Senate of the General Assembly of Indiana on January 11, 1867,[35] and passed by that body on January 16, by a vote of 29 to 18.[36] It was reconsidered on January 18, and passed a second time by a vote of 30 to 16.[37]

(*Globe,* 3d Session, 40th Congress, p. 286; January 11, 1869). Michael Kerr called the bill granting suffrage to the negro, a scheme to retain the power for the Republican party. He opposed that bill. (*Globe,* 3d Session, 40th Congress, p. 653 ff.) John P. C. Shanks expressed himself as being in favor of the suffrage amendment. (*Globe,* 3d Session, 40th Congress, p. 692.) At various times W. E. Niblack let it be known that he was opposed to negro suffrage. (*Globe,* 3d Session, 40th Congress, pp. 557, 742, 744, 745.) On the report of the Conference Committee—the Fifteenth Amendment in its final form—the Indiana representatives both in the House and the Senate divided according to party. All the Republicans voted for it, all the Democrats against it. (*Globe,* 3d Session, 40th Congress, pp. 1563 and 1641.)

[28]*Senate Journal,* 1869, p. 265. Its provisions, it will be recalled, are as follows: "Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have duly been convicted, shall exist within the United States or any place subject to their jurisdiction. Sec. 2. Congress shall have power to enforce this article by appropriate legislation."

[29]*House Journal,* 1869, p. 323.

[30]*Brevier Reports,* VII, p. 201. The vote as first taken was 26 to 9, to which 13 nays were added later. *Senate Journal,* p. 315, says the vote was 26 to 24. In either case the amendment passed the Senate legally.

[31]*House Journal,* p. 396; *Brevier Reports,* VII, p. 238.

[32]*Brevier Reports,* VII, p. 202.

[33]*Brevier Reports,* VII, p. 202.

[34]It is too long to quote here. It is usually spoken of as the amendment granting citizenship to the negro.

[35]*Senate Journal,* p. 46.

[36]*Senate Journal,* p. 79; *Brevier Reports,* IX, p. 46.

[37]*Senate Journal,* p. 96; *Brevier Reports,* IX, p. 56, gives the vote as 29 to 16.

It passed the House on January 23, by a vote of 56 to 36.[38] There was no mention, so far as I can find, of an attempted bolt or revolutionary act to defeat this amendment. There certainly was no question about the legality of the ratification of the Thirteenth and Fourteenth Amendments by the General Assembly of Indiana.

On March 1, 1869, Governor Baker sent the following message to both houses of the General Assembly of Indiana: *"Gentlemen of the Senate and House of Representatives:* I herewith respectfully submit to the General Assembly a joint resolution of the Congress of the United States, on the subject of suffrage, comprising two sections and designated as Article XV. The original copy of said joint resolution received by me is transmitted with this resolution to the House of Representatives, and a transcript thereof to the Senate."[39] On motion of James Hughes, of Monroe county, this message was made the special order for March 4, at 2:30 p.m.

Whether or not the Democratic members had agreed on a method of procedure is doubtful. It does seem that two days later (March 3) some sort of a plan must have been formulated and understood, in part at least, by both Democrats and Republicans. On this day George A. Buskirk, of Monroe, moved that the Governor's message be made the special order for the next day (Thursday, March 4) at 2 o'clock p.m. James D. Williams, of Knox, moved to amend that motion by proposing to make the resolution relating to the suffrage amendment the special order for Saturday (March 6).[40] He said he offered this because the suffrage amendment was a "firebrand" and might interrupt necessary legislation yet to be enacted. He said further that the minority were willing to assist in passing all necessary legislation, but hoped that no such "firebrand" would be thrown into the House and thus retard legislation or defeat it altogether.

Mr. Buskirk answered Mr. Williams by saying that the matter called a "firebrand" was only a constitutional amendment that demanded attention at an early date. He said that it had been postponed so that important legislation might be passed, but that the majority was now determined to take up the matter to-morrow (Thursday, March 4); and that they were willing to let the responsibility fall on the minority if the action should fail by any "irregular or revolutionary course."[41]

[38] *House Journal,* p. —; *Brevier Reports,* IX, p. 90, gives the vote as 55 to 36.
[39] *House Journal,* Regular Session, 1869, p. 884.
[40] *Brevier Reports,* X, p. 589; Indianapolis *Sentinel,* March 6, 1869.
[41] *Brevier Reports,* X, p. 589.

Mr. Coffroth said much necessary legislation was still to be enacted. In his opinion the suffrage amendment ought not to be taken up before the people of Indiana had had a chance to express their opinion on it. In the last campaign both parties had denied any intention of fastening negro suffrage on the people; to adopt it now would be a "fraud upon the people." He asserted that the minority would resist its passage by proper means, and be prepared to take the responsibility that might follow such a course.[42]

Mr. Williams's amendment failed by a vote of 41 to 53. Mr. Buskirk's motion to make the resolution the special order of the day for 2 p.m., Thursday, March 4, was accepted.[43]

On the following day (March 4) the Indianapolis *Journal* printed an editorial on the "Democratic Bolt." According to this editorial it was rumored that the Democrats of both Houses had caucused until 12 o'clock the night before, and had decided to "stave off" action on the constitutional amendment. It adds: "If they do, that will close up legislation for the present term with the most important work yet to be done."[44]

The rumor must have been well founded, for on the same day that this article appeared seventeen Senators and thirty-seven Representatives, all Democrats, resigned.[45] On the same day, and in the same message in which Governor Baker notified the House of this resignation, he stated that writs were being prepared for a special election to be held on March 23.[46] Three Democratic Senators and six Democratic Representatives did not resign.[47] They themselves claimed they had been asked by their colleagues to remain and guard the interests of their party.[48] The opposition claimed they had not resigned because they had a wholesome fear they could not be reelected.[49] They claimed that none resigned who did not believe he had a safe chance of reelection.[50]

[42] *Ibid.*, p. 590.

[43] *Ibid.*, X, p. 590.

[44] Indianapolis *Journal*, March 4, 1869, p. 8, col. 2.

[45] *House Journal*, Reg. Ses., 1869, p. 893; New York *Times*, March 11, 1869. One more Democrat, Mr. Ghormley, of New Albany, resigned on the following day, making 38 Representatives in all. (New Albany *Daily Ledger*, March 8, 1869, p. 1, col. 5.) Foulke's *Life of Morton*, II, p. 112, says that 41 Representatives resigned. This cannot be correct.

[46] *House Journal*, Regular Session, p. 893; Indianapolis *Journal*, March 5, 1869.

[47] Indianapolis *Daily Sentinel*, March 5, 1869, p. 2, says "seven" of the House did not resign; but since Mr. Ghormley resigned on that very day, I say "six."

[48] Indianapolis *Daily Sentinel*, March 5, 1869, p. 2, col. 1.

[49] Indianapolis *Journal*, March 5, 1869, p. 4, col. 4. Mr. Coffroth had been elected by a majority of seven votes. *Brevier Reports*, X, p. 593.

[50] Indianapolis *Journal*, March 5, 1869, p. 4, col. 4. This same article says

As far as can be ascertained from contemporary newspapers, there were only two opinions concerning the resignation of these Senators and Representatives. Democrats applauded the act, while Republicans spoke of it in terms that cannot be called complimentary. One Indianapolis paper[51] claimed that Indiana had a double cause to rejoice on March 4; because of the exit of Andrew Johnson, and because of the resignation of the Democratic legislators. It added that "never was a State cursed with such a gang of scoundrels." It printed the names of the Senators and Representatives who resigned under the caption, "Roll of Infamy."

Another Indianapolis paper,[52] under the title of "Democratic Folly," said that Democracy would go before the people with a bad cause, for they conspired to defeat legislation. It would have been a better plan, so it claimed, to have permitted the majority to pass the amendment, since it was sure to pass sooner or later.

The *Indiana Radical*[53] severely criticised the action of the minority. It claimed that the heavy expense growing out of their resignation was due to the action of the Democrats. At the time of resignation the legislature had passed no appropriations except those for the current expenses of the legislature. Those who resigned drew full pay up to the night of March 3, and a full allowance of stationery and stamps.[54] This same paper reported that one of those departing solons traded postage stamps for a plow.[55] The *Evening Mirror* treated the failure of the General Assembly to pass general appropriations in a humorous way, by saying that such failure had embarrassed the papers as well as the people. "We can stand it," says the *Mirror,* "but it will go hard with the *Sentinel* and the *Journal.*"[56]

that the "bolters" also made a safe thing of their full pay, as far as possible, before they resigned. They are also accused, perhaps not unjustly, of carrying off large quantities of postage stamps.

[51]*Daily Evening Commercial* (Rep.), March 4, 1869, p. 1, col. 4.

[52]*Daily Evening Mirror* (Indep. Rep.), March 4, 1869, p. 2, col. 1.

[53]*Indiana Radical,* Richmond, Indiana (Rep.), March 11, '69, p. 1, col. 8.

[54]"They clutched per diem and mileage and cribbed fifty dollars' worth of postage stamps and stationery each." (Indianapolis *Journal,* March 6, 1869, p. 4, col. 2.)

[55]"One of the conscientious bolters yesterday 'turned an honest penny' by exchanging $18 worth of postage stamps, paid for by the money of the State, for a couple of plows. Here is a fine example of a retired statesman imitating the high Roman fashion of Cincinnatus." Indianapolis *Journal,* March 5, 1869, p. 4, col. 1.) The *Evening Mirror* (March 5, 1869, p. 2, col. 1) says that Democrats and Republicans alike have been trading postage stamps for "boots, whiskey, and other refreshments."

[56]Indianapolis *Journal,* March 5, 1869, p. 4, col. 1.

The *Taeglicher Telegraph*[57] agreed with the papers cited in condemning the action of the Democrats. It called their action "small or even childish." Its editor asserted: "Had they [Democrats] informed the Republicans of their intention to resign on account of the constitutional amendment, they [Republicans] would certainly, for the welfare of our State, have refrained from considering it at that time." The facts of the case would hardly support this patriotic view.

The leading counsel for the defense in this case is the Indianapolis *Sentinel*.[58] It approves of the action of the Democrats because of the unyielding attitude of the majority. Both parties had pledged themselves, so it claims, in the last campaign to leave the question of suffrage to the States. Congress had not lived up to this pledge, and the majority of the members of the General Assembly were pledged to vote for it, so the only alternative left to the minority was to resign, which they did. The same editorial claims that if Mr. Williams's amendment to postpone consideration of the amendment until Saturday (March 6) had been accepted, all legislation could have passed, and the cost of an extra election and extra session would not have been necessary. This extra cost, the *Sentinel* claims, was plainly due to the action of the majority. The editor, on another page of this same paper, agrees with the *Journal* that the Democrats resigned to prevent the adoption of universal suffrage; that they defeated the well-laid plans of the majority "by the only certain remedy left them—the resignation of their seats."

The New Albany *Daily Ledger* comments on the cost of an extra session in these words: "It is evident that Governor Baker was determined to put the people of the Democratic counties to this extra expense, for despicable party purposes, and as a punishment for the refusal of their Senators and Representatives to sanction his favorite doctrine of negro suffrage."[59]

Indiana Democrats in Washington sent the following telegram to their friends at home.[60] *"To the People of Indiana:* It is the highest right of the people to vote upon every proposition to change the Constitution or to revolutionize their domestic policy. The question of suffrage has never heretofore been submitted to the people of Indiana. The resignation of the Democratic members of the legislature, in order to give the people a chance to determine this great

[57] *Taeglicher Telegraph* (Rep.), March 4, 1869, p. 1, col. 2.
[58] Indianapolis *Sentinel* (Dem.), March 6, 1869, p. 1, col. 1.
[59] New Albany *Daily Ledger* (Dem.), March 10, 1869, p. 1, col. 4.
[60] Indianapolis *Sentinel*, March 6, 1869, p. 2, col. 1.

question at the ballot-box for themselves, is an act of self-sacrificing patriotism[61] deserving the admiration and support of the whole people." (Signed: T. A. Hendricks, W. E. Niblack, William S. Holman, M. C. Kerr).

The Democratic side of the question is argued in detail in the "Address of Democratic Members of the Legislature."[62] This address opens with the statement that this is a white man's government—made by white men, for white men. It supports this statement by citing clauses in the State Constitution excluding free negroes and giving the right of suffrage to "every male citizen" only. The negro race is a subordinate and inferior race. The right of a State to regulate its suffrage has never been questioned. The dominant party has disregarded these principles both North and South. The Democratic party charged that "there was a settled purpose on the part of the party managers—especially in the East—of the Republican party to *force* negro suffrage, and equality, legal and social, of the races upon the people." The last Republican State convention claimed that giving the ballot to the negro of the South was a necessity, but the right of suffrage in the loyal States belonged to the people of those States. The Democratic platform of the same year expressed itself in favor of "regulating the elective franchise in the States by their citizens." The Republican speakers of the last canvass pointed to the planks of their platform as the views of the party and thereby won the victory.

The "Address" affirms with much emphasis that the bonded and manufacturing interests see their power slipping away, and want to enfranchise the negro—whose vote they hope to control—to retain political power. If they entertained this idea before election, they are guilty of fraud and treachery. When the question of giving the vote to some 600,000 persons is considered, the voice of the people should be taken. "Even in England, lately, when the question of the extension of suffrage to persons not before exercising it, was agitated, the Queen prorogued Parliament, and sent the members to the people to take their voice in the matter by way of a new election. This was the action of a monarchial government, and certainly much more should the principle prevail in a country in which it is

[61]The *Daily Evening Commercial* (March 6, 1869, p. 2, col. 2) comments on the "self-sacrificing patriotism" of the persons mentioned in this message. It claims that the members who had resigned their seats could at most lose four days' pay ($20); but this at a heavy public expense.

[62]Indianapolis *Sentinel*, March 6, 1869, p. 2, cols. 2 and 3. The next two or three pages constitute a review of this address. Unless another reference is given, the reader will understand that the authority just cited is to be taken.

said the 'voice of the people is the voice of God.' Then let us consult that voice."

The authors of this "Address" feel certain that the people do not want negro suffrage. They offer as evidence the fact that that question was submitted, in the last few years, to the people of Connecticut, Ohio, Michigan, Wisconsin, and Kansas, and was voted down in every one of these States. The Republican party proposes the suffrage amendment now, so that, if passed, the opposition may have died down sufficiently before the next election to enable them to carry that election by the addition of the negro vote. They are trying to force the people to their views. "We desire to consult the people, and not only so, but obey their wishes when expressed fully and fairly."

The Republicans talk a great deal about defeating appropriations. The Democrats are not responsible for this. The Committee on Ways and Means did not introduce these appropriation bills until a late date. The Democrats then asked, both publicly in the House and privately, that the suffrage amendment be postponed for only two days so that necessary legislation might be passed. The majority refused to do this. Furthermore, the Governor had given no assurance that no extra session would be called even if the appropriation bills were passed. Rather than grant a postponement of the suffrage amendment for two days, the majority were willing to let deaf and dumb, insane, and disabled soldiers and their widows and orphans, be without support. "In other words they thrust the negro in advance of everything. They subordinate the interests of those who cannot speak to make known their wants; of those whose maniacal ravings or imbecile tones command our attention; of the weeping widow, the wailing orphan, and the crippled soldier—all, all, are lost sight of in the effort to establish legal and social equality of the degraded colored race with the superior white race."

That social equality was being aimed at they thought was evident. The Legislature a few days before had asked to have colored and white children placed in the same school, and the matter was to be taken up again by the special session. Both the Governor and Superintendent of Public Instruction claimed that the policy heretofore followed was "illiberal" and "unconstitutional." The latter is quoted as having said: "The Son of God, when he clothed himself in flesh, took neither the Caucasian (White) nor African (Black) type, but a medium between them."

The Republicans, the "Address" continued, try to make much of

the fact that each county having a special election will have an extra expense of $1000. This extra expense might have been avoided by combining the special with the regular April election—only twelve days later than the special election. The fact that the Governor set the special election on a separate day is nothing less than "spite work to punish constituents for sending hard-headed representatives."

The "Address" closes with the following appeal: "If all legal and constitutional barriers and middle walls of partition between the two races are to be broken down; if our schools are to be thrown open, or our school funds, raised by white men, are to be divided with this people; and if they are to vote, and hold office, and sit as jurors,—then will our whole State be flooded by this population. If they labor they will come in competition with, and strike down the wages of, white men and women; if they will not labor, then our pauper asylums, jails, and penitentiaries will be filled with them. Holding these views, the only remedy left in our hands to prevent the ratification of this great iniquity was to restore to you, as the fountain head, the offices bestowed upon us, and take your opinion as to whether we have reflected your will and have stood faithfully by the trust you reposed in us. We hope, if you approve of these doctrines and actions of your representatives, that you will be willing to come out and devote one day to the establishment of principle."[63]

The introductory remarks of this "Address," dealing with the "white man's government," needs no discussion, since we know that doctrine has long since outlived its usefulness. We also know that the much-dreaded social equality[64] has failed to become the fashion. The "Address" certainly lost strength by devoting so much time and space to the doctrine of a "white man's government" and to the denunciation of the much-dreaded social equality, instead of concentrating its fire on the legal and constitutional side of the question.

The Republican side of the suffrage amendment controversy is best treated in the "Address of the Republican Members of the Legislature to the People of the State of Indiana."[65] I shall give

[63]Signed by Senators J. M. Hanna, Wilson Smith, Archibald Johnson, O. Bird, and Representatives J. R. Coffroth, J. F. Welborn, C. R. Cory, W. T. Carnahan.

[64]On the subject of "social equality" the Indianapolis *Journal* (March 8, 1869, p. 4, col. 2) says: "But these Democrats can never be cured of their fear that if a negro be allowed to vote he will marry some Democratic old maid in spite of her teeth and claws, or negro wenches may marry them against all their * * * antipathies. They can protect themselves against white women, but the moment a darky wench brings her fascinations to bear upon him, he is gone."

[65]Indianapolis *Journal*, March 8, 1869, p. 2, cols. 3, 4 and 5.

the main facts of that argument, and quote from it where it expresses the thought better and more forcibly than a condensation could do.

On Thursday morning seventeen Senators and thirty-seven Representatives, all Democrats, resigned.[66] Their reason for resigning was to defeat action on the Fifteenth Amendment. The resignation broke the quorum when all necessary legislation might have been passed in the three remaining days. Many important measures were just about ready for the final vote; the main one of these was the appropriation bill. All work was stopped by the revolutionary action of the minority.

The Fifteenth Amendment came to the Governor, was submitted to the legislature and made the special order for Thursday, March 4, at 2:30 p.m., *"without an opposing voice."* The Democrats were assured that it would not be taken up before, but that the regular order of business would be followed until the amendment should be reached. The resignations were handed to the Governor at 8:30 a.m. on Thursday, March 4.

In the five and one-half hours between the time of resignation and the time set for taking up the amendment, the appropriation bill, making unnecessary an extra session, might have been passed. This bill had already passed the House, had been read once in the Senate, was then before the finance committee of the Senate, and might have been disposed of by 11 o'clock of that day. Had it been passed the expense of the present legislature ($100,000) would not have been totally lost, and the cost of the extra session ($50,000) might have been avoided. The disregard for public official obligation, the principle involved, means much more. "Obedience to government, is the only hope of a free republican government."

The Democrats had not the slightest assurance that the amendment would have been passed; strong probability of acceptance is no excuse for their action. It would probably have passed the House, but not more than twenty-three votes could be counted for it in the Senate. All of the twenty Democrats and three of the Republicans were opposed to the amendment. Three other Republicans were personally opposed to it, but would not commit themselves; and one Republican was absent on account of sickness. The Republicans were uncertain, the Democrats ignorant; yet the latter were willing to risk ruin for personal and party motives. "This is

[66] I shall present the argument as the "Address" of the Republicans did. Unless another authority is cited, the last one given is to be taken.

the questionable virtue and patriotism that nourished and developed, in its power for evil, the late Rebellion; it is the political material beneath which all free governments have heretofore been buried, and a wise and judicious people will look well to it that the same means shall not be employed for our overthrow which are found mingled with the ruins of the republics of former ages."

The Democrats have no excuse for resigning, since they claim an amendment ratified by one legislature may be repealed by a succeeding one. Ohio and New Jersey acted that way on the Fourteenth Amendment; Indiana might have done the same with the Fifteenth.

They care little for extra expense, and shamelessly attack Governor Baker for not having the vacancies filled on the day of the April election. The present appropriations expire the last of March. To meet the current expenses the Governor would have to borrow money or draw on the treasury in violation of law.

The plea is made that the minority wish to consult the people. The people gave Congress and the legislatures the right to make amendments. Congress proposed the amendment legally, the Governor certified it properly and submitted it to the State Legislature. "All this they know; they knew their duty and did it not, but calumniate the majority because they, too, would not in a like faithless manner, by agreement with them, abandon their post of duty and service, to engage in a worse than useless contest over an exciting question, before the people, when the highest authority, that of the people through the Constitution, had clothed the legislature with power to dispose of the matter."

The majority of those who resigned will probably be reelected. It is a question whether they will do their duty in the special session, or be bolder and more defiant than ever. Judging from the speeches at Metropolitan Hall[67] of last Friday night, the "disgraceful scenes and base portrayal of public trust" will be repeated. The result of such action would be widespread suffering among the State's wards. The soldier and those depending on him are referred to in these words: "Their poverty, wounds, and helpless condition commend them to the gratitude of the nation; but those public servants would turn them loose, without home or food, rather than forego the opportunity of betraying the public trust in obedience to insane party prejudice."

[67]A meeting was held at Metropolitan Hall on the night of March 5, 1869, by persons opposed to the ratification of the amendment (*Sentinel*, March 5, 1869, p. 2, col. 1).

The Republican "Address" closes with this appeal: "There is a remedy, and only one, and that remedy is to be found in the good sense, the integrity, and patriotism of the people; and to that remedy we now appeal—being fully assured that their approbation will not be withheld from the faithful law-abiding representatives who desire to do their whole duty, that it may be bestowed upon the lawless public servants who seek the triumph of a political party at the sacrifice of the public welfare. To the people we say, and especially the people in whose districts Senators and Representatives are now to be chosen, this remedy is in your hands; employ it for your own good and the good of the public. You may have your political preferences, you may have partisan favorites, but your love of home and family, of order and harmony, of security and peace, will outlast all such predilections. Use the power in your hands to promote order, law, and good government, and you will not again be called upon to supply vacancies in office, voluntarily made by reckless politicians, with men who will be true to the obligations of duty and public conscience."[68]

That the Republican members of the legislature had their argument put up in better form than their Democratic opponents can hardly be questioned; still it has more than one Achilles' heel. The "Address" says that the appropriations might have been passed if the Democrats had remained in the General Assembly up to the time set for considering the suffrage amendment. Such could only have been done—a thing unusual and probably unheard of—by limiting the discussion very much and accepting the measure without amendments. The action of the special session is strong proof against this assertion of the Republicans.

The Republicans also say that the amendment was not sure of a majority vote in both houses. It was not so sure, perhaps, as death or taxes, but according to the evidence of the Republicans themselves, the Democrats can hardly be accused of taking fright without cause.

The reference to the right claimed by the Democrats to rescind the act of one legislature by the succeeding one may have had weight at the time the address was written, but subsequent events have proved conclusively the worthlessness of this argument.[69] If the

[68]This "Address" was signed by John C. Cravens and John A. Stein, Senators; A. P. Stanton, Speaker; George A. Buskirk and Milton A. Osborn, Representatives.

[69]The Democratic legislature of 1871 proceeded to rescind the Fifteenth Amendment. On January 30 of that year the Senate by a vote of 26 to 20 decided to

regular session of 1869 had ratified the Fifteenth Amendment, no subsequent action—assuming that no special session would have been called—could have been taken before January, 1871. Before that time the amendment had received the necessary support of three-fourths of the States (as the powers that were at that time construed it), and was proclaimed as part of the Constitution.[70]

The Republican defense of Governor Baker for failing to have the vacancies in the General Assembly filled on the day of the regular spring election is weak indeed. I fail to find that a delay of twelve days, which this would have necessitated, would have added much, if anything, to the distress of the persons named.

The Republican appeal, however, is pitched on a higher plane than that of the Democrats. The former appeals to the patriotism of the people, the latter to their race prejudice.

III. SPECIAL ELECTION AND SPECIAL SESSION

The same message of Governor Baker to the House of Representatives which informed that body officially of the resignation of thirty-seven of their number, announced also that writs were being prepared ordering a special election to fill the vacancies caused by the resignations, to be held on March 23.[71]

The campaign was a short one. The Democratic papers expressed confidence that the so-called bolters would be reelected, while the Republican papers confined themselves largely to discussing what these "bolters" deserve. The Indianapolis *Journal* resorts to some ridicule in dealing with this subject. On the day of the special election (March 23) it has this to say about the fear of the Democrats that about 6,000 negroes in Indiana may be given the ballot:[72] "We have the most solemn assurance from the Democratic press and orators that, if Sambo is permitted to vote, white Democrats must marry 'nigger' wives, and blooming damsels of Democratic parentage will seek husbands among the comely sons of Ham."

rescind it (*Sentinel,* Jan. 31, 1871; *Brevier Reports,* XII, pp. 144 and 177). On February 7, the House, by a vote of 47 to 43, decided to refer this amendment to the Committee on Federal Relations (Indianapolis *Sentinel,* March 8, 1871; *Brevier Reports,* XII, p. 236). Any action of this kind was useless as the following note shows.

[70]Hamilton Fish, Secretary of State, on March 30, 1870, announced that twenty-nine States (including Indiana), the necessary three-fourths, had ratified the amendment and that it was now in force (*Globe,* 2d Session, 40th Congress, pt. 3, p. 2290).

[71]*House Journal,* Regular Session, 1869, p. 893. The Message is dated March 4, 1869. Indianapolis *Journal,* March 5, 1869, p. 4, col. 1.

[72]Indianapolis *Journal,* March 23, 1869, p. 4, col. 4.

Early returns of the special election showed that the Democrats had been successful. The Indianapolis *Sentinel* of March 24[73] says that the returns are meager, but that it is practically sure that all the Democrats are elected except Mr. Huey. His district was changed in 1867, and at the time of the special election was composed of Grant, Blackford, and Jay counties. In the last election these three counties showed a Republican majority of 382. On the following day the election of Mr. Huey was also conceded, making it a complete victory for the Democrats.

The Republicans, so far as I can find out, did not make any claims, but contented themselves with trying to minimize the Democratic victory.[74]

A careful study of the returns of the special election, so far as these are available, shows that the Republicans took little interest in the contest. Of the seventeen Senators elected, seven were elected without a dissenting vote. Fourteen out of the thirty-eight Representatives had no opposition.[75]

Governor Baker called the special session of the General Assembly[76] to meet at Indianapolis at 2 p.m. on Thursday, April 8, 1869. In this call and in his message to the special session[77] he gave as his reason the failure of the regular session to pass the necessary appropriations, but did not so much as mention the Fifteenth Amendment.

Pursuant to this call, the Indiana legislators reported at Indianapolis at the specified time. I put it "reported at Indianapolis,"—for it would be incorrect to say that they reported for duty at that time.[78] The Republican members reported at the State House, but their Democratic co-workers stayed away from the legislative halls for some time. The reason for their staying away from the State House seems to have been that they wanted to get some assurance from the Republican members that the Fifteenth Amendment would not be taken up until all necessary legislation had been passed. The Republican State paper[79] claims that thirteen Representatives and five Senators signed a pledge giving this assurance, but that this pledge was rejected by the Democratic caucus on the ground that

[73]Indianapolis *Sentinel*, March 24, 1869, p. 1, col. 1.

[74]Indianapolis *Journal*, March 24, 1869, p. 4, col. 2.

[75]Four men of color, three in Franklin and one in Fountain county, received votes at this special election.

[76]*House Journal*, Regular Session, 1869, p. 893.

[77]*Senate Journal*, Special Session, 1869, p. 3; *House Journal*, Special Session, 1869, pp. 33 and 34.

[78]Indianapolis *Journal*, April 12, 1869, p. 4, cols. 2 and 3.

[79]*Ibid.*, April 13, 1869, p. 4, cols. 3 and 4.

the Republicans refused to have the agreement printed. Because of this rejection, according to the Indianapolis *Journal,* the Republican members withdrew their pledge, and the Democrats took their seats (April 12) without any assurance. That the Democrats stayed away from the State House for the sole purpose of getting some sort of assurance from the Republicans seems evident; and it is probable they were given this, for on the day the General Assembly was organized (April 12) the House set the Fifteenth Amendment as the special order of the day for Tuesday, May 11. The Senate agreed to this on the following day.[80]

The absence of the Democrats from the State House until some assurance should be given them that the suffrage amendment would not be taken up at an early date cannot have been a surprise to the Republicans. The Indianapolis *Journal* of March 8, 1869,[81] claims to have been informed "that the Democrats who may be elected at the special election will not present their credentials at the opening of the next session unless the Republicans abandon the constitutional amendment." This can hardly be called a guess. Since that is what practically did happen, the statement must be founded in part, at least, on a knowledge of the Democratic plan of procedure. It was understood that the Democrats could, at any time, defeat action on the amendment by resigning as they had done before.[82] This plan was favored by many Democrats, but few may have been as outspoken as a certain Clay county paper is reported to have been. This paper is reported as having said, in referring to the resignations of March 4, 1869:[83] "Well done, thou good and faithful servant; repeat the dose if this does not work the reformation." The course that later was adopted by the Democrats, and how the Republicans met it, will be considered in due time.

At the time set by the Governor for the special session, 2 p.m., April 8, a majority of the Republicans of both Houses—fifty-nine Representatives[84] and twenty-seven Senators[85]—were present, but for reasons stated above, the Democrats did not appear. It was not until April 12 that a sufficient number of Democrats presented their

[80]*Senate Journal,* Special Session, 1869, p. 19; *House Journal,* Special Session, 1869, p. 15; Indianapolis *Journal,* April 13, 1869, p. 2, col. 6.

[81]*Ibid.,* p. 4, col. 3.

[82]The political complexion of both sessions was identical—House, 56 Republicans, 44 Democrats; Senate, 30 Republicans, 20 Democrats. Indianapolis *Journal* of April 12, p. 4, cols. 2 and 3, admits that they can defeat it in this way.

[83]*Ibid.*

[84]*House Journal,* Special Session, 1869, p. 4.

[85]*Senate Journal,* Special Session, 1869, p. 4.

credentials to make a quorum. On this day twelve Democratic Senators[86] and thirty-five Democratic Representatives[87] took their seats as duly qualified members of the General Assembly.

During the time that the Republican legislators were waiting for a quorum (April 8-12) a new interpretation of what constitutes a quorum was given to the public. On April 10, Isaac Kinley, Senator from Wayne county, said: "The Constitution provides that a majority of the members elected can enact a law or pass a joint resolution. If these gentlemen who stand outside of the bar are not members, then they are not 'members elected,' and the thirty or so members that are here are the Senate and can transact any business we choose."[88]

Two days later (April 12), Mr. Wolcott, Senator for Benton, White, Pulaski, Jasper, and Newton counties, when speaking on the question of a quorum, elaborated this same theory.[89] He claimed that even though the Senate had believed the quorum to have been broken by the resignation of seventeen Senators on March 4, they had always been a "competent legislative body." He cited that part of the Indiana Constitution that says "two-thirds of each House shall constitute a quorum." This, he argued, does not mean that there cannot be a quorum when there are absences and vacancies. According to his views the Constitution set the maximum, but not the minimum, number that constitutes a quorum. He admitted that his construction of a quorum was not the customary one, but urged that it was not the first time in the century that "new and correct views of statutes and constitutions have obtained."

Mr. Wolcott also discussed that part of the State Constitution that says "a majority of all members elected to said House shall be necessary to pass every bill or joint resolution." He considered qualification as belonging to and being a part of election. "Then the Democratic members could not be considered elected, and need not be considered in determining what constitutes a majority." Shortly before the Democratic Senators took their oath of office, Mr. Wolcott offered this resolution: "That inasmuch as there is a quorum of all the members that are qualified under the Constitution as Senators present, the President be and is hereby directed to proceed with the business of the Senate." The Lieutenant Governor ruled this

[86] *Ibid.*, pp. 17 and 18.
[87] *House Journal*, Special Session, 1869, pp. 10-12.
[88] *Brevier Reports*, XI, p. 31; Indianapolis *Journal*, April 12, 1869, p. 2, col. 5.
[89] *Ibid.*, XI, pp. 35 and 36.

resolution out of order.[90] We shall see later on, when the question of a quorum again comes up, what weight is placed on the views expressed by these two gentlemen.

On the day that the General Assembly organized (April 12), the House of Representatives agreed to postpone the consideration of the Fifteenth Amendment until May 11. Later it was postponed until 2:30 p.m., May 14. The Senate voted for the latter postponement on May 8;[91] the House on May 10.[92] It seemed at that time that all necessary legislation would not be passed by May 11, and that a postponement of three more days was considered expedient. The Indianapolis *Journal*[93] claimed this meant that the amendment would not be considered at all; that on the evening of May 13 the Democrats would leave and thus defeat all action on it. It added that even if the Democrats should withdraw, they could not keep the amendment from going into effect, since enough other States would ratify it to make the necessary three-fourths.

The *Journal's* claim that the Democrats would not be present on May 14 was good prophecy; yet prophecy of such a nature that others familiar with the political affairs of Indiana could have done as well. The Democrats had resigned on March 4 to defeat the amendment, and there was no reason to believe that their political views had been worked on by sleight-of-hand performers. Besides, the Democrats who took time to explain their votes on the final postponement, said they were unwilling to act on the amendment before the people had expressed themselves on that question.[94]

The Indianapolis *Sentinel,* in commenting on the statement of the *Journal* that the ratification of three-fourths of the States was inevitable, even if Indiana should fail to act on the amendment, said: "If such is the case, why then should the Republicans force a vote in Indiana where a great majority of the people is opposed to it?"[95]

That the Democrats were determined to resign a second time to defeat action on the suffrage amendment seems to have been common knowledge, as the time for considering the measure drew near. The Democratic State organ announced on the morning of May 13[96] that the legislature would probably terminate on that day. In its opinion all necessary legislation had been completed. John R. Coff-

[90] *Brevier Reports,* XI, p. 37.
[91] *Senate Journal,* Special Session, 1869, p. 384.
[92] *House Journal,* Special Session, 1869, pp. 508-510.
[93] Indianapolis *Journal,* May 11, 1869, p. 4, col. 4.
[94] *Brevier Reports,* XI, p. 202.
[95] Indianapolis *Sentinel,* May 12, 1869, p. 2, col. 1.
[96] *Ibid.,* p. 1, col. 2.

roth, one of the leaders of the House, had said that he would not remain and help make a quorum to pass that infamous amendment.

The Republicans desired to force a vote on the Fifteenth Amendment. On the morning of May 13, A. Y. Hooper in the Senate moved to suspend the order of business so the amendment might be taken up. The motion was defeated by a vote of 19 to 25.[97] This action convinced the Democrats that their political opponents were determined to bring up the question on that day, even though the following day had been set for its consideration.

At noon of the same day (May 13), both the Democrats and Republicans of the General Assembly held caucuses. The Democrats decided that the eleven old Senators, those whose terms expired with the session, and the Democratic Representatives, were to resign their seats. The reason given for this arrangement was that it would break the quorum in the House but not in the Senate. Thus the Senate might act on unfinished legislation that had passed the House.[98]

The Republicans held a caucus at the same time that the Democrats were perfecting their plans. We have but little definite knowledge as to the course decided on in this caucus. The Indianapolis *Journal* does not discuss it, and the Democratic papers seem to have only second or third hand information. The *Sentinel*[99] states it was understood that Senator Morton was present at this caucus and stiffened the backs of some of the wavering Republicans. Since Senator Morton was a man of action and a party man, it is very probable that his participation in the caucus had something to do with the action of the Republican members for that and the following day.

In accordance with the decision of the Democratic caucus, ten Senators[100] sent their resignations to the Governor between 2:00 and 3:00 p.m. of May 13. Just why only ten resigned at this time, and sixteen are reported as having resigned on May 13, is not clear. Besides the Senators named below, Senators Ochnig Bird, Robert Huey, James M. Hanna, Charles B. Lasselle, and William H. Montgomery resigned on that day.[101]

[97] *Senate Journal*, Special Session, 1869, pp. 472 and 473; *Brevier Reports*, XI, p. 221.

[98] Indianapolis *Sentinel*, May 14, 1869, p. 1, col. 2.

[99] *Ibid.*

[100] Senators Carson, Gifford, Howk, Huffman, Humphreys, Lee, Smith, Sherrod, Taggart, Turner. Eleven had been agreed upon, but only ten names appear. (Indianapolis *Sentinel*, May 14, 1869, p. 1, col. 2. *Senate Journal*, Special Session, 1869, pp. 480 and 481.)

[101] All the source material at my disposal says that sixteen Senators resigned

The Democratic Representatives followed the example of the sixteen Senators, and resigned to break the quorum. Forty-one representatives resigned on May 13.[102]

When the Senate met in the afternoon of May 13, both the Democrats and Republicans had decided on a definite course. The former, by resignation and absence, would break the quorum; the latter would take up the Fifteenth Amendment. Had the Democrats, who said they had resigned, stayed away from the Senate chamber, the course of procedure would have been different; but even then, we may safely say, the amendment would have come up for consideration.

The first roll-call of the afternoon of May 13 showed only twenty-six Senators present.[103] The doorkeeper was ordered to bring in the absentees, and later the doors were locked. Later in the afternoon the President *pro tempore,* John Green, announced that thirty-four Senators were present. At about this time the rumor became general that the Democratic Senators and Representatives had resigned. John R. Cravens claimed he had seen the resignations of eleven Senators.[104]

Another roll-call took place in the Senate at 2:42 p.m. When W. W. Carson's name was called, he said that he was no longer a Senator. J. A. Stein suggested that Mr. Carson be marked present, since there was no certificate showing that he was not a Senator. Daniel Morgan also said he did not know whether or not he was still a Senator. The Democrats protested without avail; the roll-call proceeded and showed thirty-five present.[105]

on May 13; those authorities that give the names report only fifteen. (*Senate Journal,* p. 481; *Brevier Reports,* XI, p. 236; Indianapolis *Sentinel,* May 15, 1869.) Senators Bradley, Henderson, Johnson, and Morgan did not resign. (Indianapolis *Sentinel,* May 15, 1869. Their names also appear in the *Senate Journal* after May 13.) That leaves one Democratic Senator unaccounted for, namely, Mr. Denbo. Since Mr. Denbo was present in the Senate on May 13 (*Senate Journal,* p. 476), but his name does not appear in that volume after that date, it seems that he is the sixteenth Senator who resigned on May 13. This opinion is strengthened by an item in the New Albany *Daily Ledger* of May 14, which says that Hon. George Denbo, Senator from Washington and Harrison counties, was in the city on that day.

[102] *House Journal,* Special Session, 1869, pp. 559, 560; Indianapolis *Journal,* May 15, 1869, p. 4, col. 2; Indianapolis *Sentinel,* May 15, 1869. The *House Journal* says forty-two resigned, but gives only forty-one names. Messrs. Coffroth and Davis were the only Democrats left in the House after May 13. That leaves Mr. McFaddin unaccounted for. His name appears in the call of the House for the last time on May 7. The Logansport *Democratic Pharos* of May 12 says: "Mayor McFaddin has resigned his office of Representative * * * and has entered upon his duties of mayoralty of this city." Plainly only forty-one resigned on May 13.

[103] *Brevier Reports,* XI, p. 222.

[104] *Ibid.*

[105] *Ibid.*

John R. Cravens repeated that he had seen the resignations of eleven Senators—those whose terms expired with the session. Not counting this number, plus the two absentees—James Hughes and Sims A. Colley—there were still left thirty-seven Senators, a quorum. Mr. Cravens said: "We are still a working body, and if there is anything desired to be done, now I suppose is as good a time to do it as any."[106]

William F. Sherrod said he had been informed that his resignation had been handed in—but further remarks were drowned by cries of: "Order"; "If you are not a Senator you have no right to speak"; and similar remarks.[107]

The next question that came up concerned the closing of the doors. Mr. Wolcott offered the resolution that they remain closed. Mr. Johnson of Montgomery objected to this on the ground that the Senate could not close the doors unless secrecy were necessary. Mr. Wolcott claimed that "the emergency of affairs at this time demanded secrecy."[108] S. F. Johnson said that if secrecy were necessary the lobby would have to be cleared. Harvey D. Scott wanted to know what it was that demanded secrecy. Mr. Wolcott evaded this question by saying, "Let every Senator determine this for himself." Firman Church said he was afraid his wife would hear about it. Finally Mr. Wolcott withdrew the resolution asking that the doors remain closed.[109]

Since the Lieutenant Governor decided that the roll-call showed a quorum[110] present, the Senate was ready to proceed with the order of business. A. Y. Hooper moved the adoption of the Fifteenth Amendment. The vote then taken stood: yeas, 27; nays, 1; present but not voting, 10.[111] The Senate considered it necessary to pass

[106] *Brevier Reports,* XI, p. 223.

[107] *Ibid.*

[108] *Ibid.*

[109] *Ibid.* Even though that resolution was withdrawn, we have no mention of the opening of the doors until after the vote was taken. New Albany *Daily Ledger* (Dem.) of May 14, 1869, claims the doors were locked so that the Democrats could not get out. It also claims that they also tried to lock the doors of the House, but could not find the keys which, rumor said, were in the pocket of a Representative not a thousand miles from New Albany.

[110] This included the Democrats present who claimed they were no longer Senators because of their resignations. Actual count shows 37 names (*Senate Journal,* Special Session, p. 474).

[111] *Brevier Reports,* XI, p. 224; *Senate Journal,* Special Session, 1869, p. 475. Yeas: Messrs. Andrews, Armstrong, Bradley, Bellamy, Case, Caven, Church, Cravens, Eliott, Fisher, Fosdick, Gray, Green, Hadley, Hamilton, Hess, Hooper, Johnson of Spencer, Kinley, Rice, Reynolds, Robinson of Madison, Robinson of Decatur, Scott, Stein, Wolcott, Wood—27. Nays: Mr. Jaquess. Present and not voting: Messrs. Carson, Denbo, Giffort, Henderson, Johnson of Montgomery, Lasselle, Lee, Morgan, Sherrod, Smith—10.

a resolution that it be entered on the journal that these ten Senators were present but did not vote.

As the roll was being called on the suffrage amendment, the Democrats present claimed they were no longer members, since they had resigned. This availed them nothing, for some Republican, when the name of one of the Democrats was called, answered "Present but not voting." Messrs. Sherrod and Gifford objected to this, because they had announced their resignations. Mr. Kinley said that both admitted being members by speaking on the floor of the Senate. Mr. Cravens asserted that they would have to be considered members, since the Senate had no official notice of their resignation.[112]

There is serious doubt about the presence of all ten of the persons reported as "present but not voting." The protest offered by the four remaining Democratic Senators—Messrs. James Bradley, E. Henderson, Daniel Morgan, and S. F. Johnson—asserts that "Wilson Smith and G. M. Denbo were not then present in said Senate chamber or in the lobbies thereof."[113] This same protest claims Messrs. Carson, Gifford, Lee, Sherrod, and Smith were no longer members of the Senate, since they had resigned their offices and had informed the President of the Senate of their action.

Since the record of the Senate showed that a majority of that body with a quorum present had voted to ratify the Fifteenth Amendment, the House of Representatives also considered it necessary to take action on it. No quorum was present in the House on the forenoon of May 13.[114] On the afternoon of the same day only a few Democrats were present. This was said to have been due to the resignation of many of them. When the House took a vote on the question of dispensing with the further proceedings of the call, Milton A. Osborn objected to the vote of John C. Lawler on the ground that the latter was no longer a member.[115] The Speaker answered the objection in these words: "The chair holds that gentlemen must be treated as members here, till we are officially notified otherwise." John R. Coffroth and Henry G. Davis took exception to this, but the roll-call proceeded. The result of the vote as announced by the Speaker was: Yeas, 16; nays, 55; total, 71. Then Moses F. Dunn moved the following resolution: "Resolved, that while we condemn and censure an act revolutionary in its char-

[112] *Brevier Reports,* XI, pp. 224-225.

[113] *Brevier Reports,* XI, p. 247. Indianapolis *Sentinel,* May 15, 1869, p. 2, cols. 1 and 2. If these two were not present, then the number present is reduced to 36—still a quorum.

[114] *Brevier Reports,* XI, p. 226.

[115] *Ibid.*

acter, we congratulate the people of this State on their happy deliverance from the curse of a factious minority."[116]

Although the vote on the motion to dispense with the further proceedings of the call showed a majority present, doubts were later expressed as to a quorum. The Speaker ordered another roll-call. The result this time showed fifty-five present.[117] The Speaker announced there was no quorum voting. He added: "It is not competent for the House to do any legislative business after it has been ascertained there is no quorum present."[118] Anthony E. Gordon (Republican member from Boone county) offered a resolution to refer the Fifteenth Amendment to the people, since it could not pass the present session with a quorum present. Objection was raised against this resolution, and the House adjourned.[119]

The House met again on the following morning (May 14), considered a few matters of little importance, then took a recess till 2 p.m. The motion on the call of the House had shown only fifty members voting.[120]

When the House met at 2 p.m. on May 14, fifty-six members were present.[121] (None of the Democrats who had resigned is included in this number.) Milton A. Osborn moved to take up the Fifteenth Amendment. John R. Coffroth said that there being no quorum present, the House could neither legislate nor act on the amendment. The Speaker answered him by saying that the chair had repeatedly ruled that for purposes of legislation sixty-seven constitutes a quorum, but opinions differed as to what constitutes a quorum to take up the suffrage amendment. He added that on this question there was no precedent or law; but if it was to be settled at all, it would have to be settled under conditions then existing, and let the courts have the final word.[122] So the Speaker decided that the motion to take up the Fifteenth Amendment was in order. This amendment, known as Joint Resolution No. 18, was then passed. The vote stood: Yeas, 54; nays, none; not voting, 3;[123] total, 57.

[116] *Brevier Reports*, XI, p. 227.
[117] *Ibid.*
[118] *Ibid.*, p. 228.
[119] *Ibid.*
[120] *Ibid.*
[121] *Ibid.*, p. 239.
[122] *Ibid.*
[123] *Ibid.*, p. 240. Yeas: Messrs. Baker, Barnett, Beatty, Beeler, Bowen, Breckenridge, Chapman, Chittenden, Davis of Elkhart, Davidson, Dunn, Fairchild, Field of Lake, Field of Lagrange, Furnas, Gilham, Gordon, Green, Hall, Hamilton, Higbee, Higgins, Hutson, Johnson of Park, Johnson of Marshall, Jump, Kercheval, Lamborn, Mason, Millikan, Miller, Monroe, Osborn, Overmeyer, Pierce

It is interesting to note the reasons some of the fifty-four gave for voting for the adoption of the amendment; and also the reasons the three gave for refusing to vote.

Mr. Coffroth refused to vote because he believed action on the amendment without a quorum present was illegal. He claimed also that his oath to support the Constitution of the United States and that of the State would not permit him to be a party to an act passed with less than sixty-seven present.[124] Henry G. Davis, of Floyd, refused to vote for practically the same reason—because, in his opinion, the House had no right to do so.[125]

As James V. Mitchell has given us a strong argument against the ratification of the Fifteenth Amendment at that time, I shall give his reasons for refusing to vote more in detail.[126] Mr. Mitchell said there had been no discussion whatever of the question in the House, and for that reason alone did he claim the right to explain his position at that time. He said that recently the sovereign power, the people, irrespective of party, had said that the right to control the suffrage belonged to each State "for herself." According to that, as he believed, if all the other States should vote to confer the right of suffrage on the negro, Indiana would still be free to refuse to grant it. He admitted, that "if she did refuse, she might be deprived of her representation as declared in the Fourteenth Amndment. For when the Constitution itself declares, that if any State shall refuse to any portion of her citizens the right to vote, she shall not be allowed representation in Congress for that number, it says to every State in this union, you may or you may not grant the franchise just as you like."[127] Mr. Mitchell answered the argument that it was proposed to amend the Constitution in regard to suffrage by saying that the Constitution "has declared that right in favor of the people." He claimed that the people were then heaping curses upon the heads of our Senators and Representatives who, pledged to the principle of a State regulating its own suffrage, "violated their obligations to their sovereigns." Furthermore, he had sworn to support the Constitution of this State, and it declares that no business can be done without a quorum. He would not acknowledge the right of the

of Porter, Pierce of Vigo, Ratliff, Rudell, Sabin, Skidmore, Smith, Stanton, Stephenson, Stewart of Ohio, Stewart of Rush, Taber, Underwood, Vardeman, Vater, Wildman, Williams of Hamilton, Williams of Union, Wilson, Buskirk (Speaker)—54. Not voting: Messrs. Coffroth, Davis of Floyd, Mitchell—3.

[124] *Brevier Reports*, XI, p. 240.

[125] *Ibid.*

[126] *Ibid.*, p. 241.

[127] *Ibid.*

House to act on the question by voting either for or against it; neither would he make perjury the last act of his connection with the Fortieth General Assembly of Indiana.[128]

Of those voting for the ratification of the amendment, Gilbert A. Pierce, of Porter, gave the best explanation of his vote, and I shall give it first. He took exception to Mr. Mitchell's reference to perjury, designating it as "uncalled for." In his opinion the House had a legal right to pass a resolution or laws, as long as a majority was present. He said if the minority, by their resignations, were allowed to break up a quorum, it would set a bad precedent; and in the future it might be impossible to pass important legislation. To quote Mr. Pierce:[129] "If that doctrine is entertained, I submit that our institutions are a mockery, our republicanism is a farce, our State government is nothing but a huge skeleton draped in the fig-leaves of democracy."

Mr. Pierce discussed also the question of a quorum.[130] He argued if the "House" meant a full membership (100) then practically all acts of legislation are illegal. If less than a hundred contsitutes a "House," then the question arises, How many less? He cited instances in the national House where less than half the members had been considered a quorum. He agreed with Vallandigham who said in Congress that they had no knowledge of any members unless they appeared there. He concluded with these words: "The question of negro suffrage is about to be settled for all times. . . . It has been the threatening cloud which has hung over this nation for years. Let us dispel the clouds by voting for this just provision, and thereby set in the political heavens the rainbow of peace to us and promise to them."[131]

S. H. Stewart, of Rush county, voted to pass the resolution, because he claimed they had to meet revolution with revolution, and that it was constitutional to do right. He did not believe there was any precedent for the case; it was even so unnatural that there was no law covering it.[132]

John I. Underwood claimed that there was a quorum present, and that he was bound by oath to vote "aye." According to his interpretation of "quorum," forty members at that time could legislate or do any other business that might come up.[133]

[128] *Ibid.*
[129] *Ibid.*, p. 242.
[130] *Ibid.*
[131] *Ibid.*, p. 243.
[132] *Ibid.*, pp. 243-244.
[133] *Ibid.*, p. 244.

Moses G. Dunn voted for the resolution because he believed he had a legal and constitutional right to do so. Even had he thought otherwise, he would have felt justified to vote that way, in accordance with the old maxim, "In rebellion laws are silent."[134]

Anthony E. Gordon personally believed that the vote was illegal; but since learned lawyers had given their opinion to the effect that it was legal, he was willing to give the benefit of the doubt to humanity and vote "aye."[135]

From the foregoing explanation of votes we see that those who refused to vote claimed that the House could not take action at that time because, in their opinion, there was no quorum present. Those who favored the passage of the amendment at that time were not unanimous in their opinion why it should pass. Some were satisfied that a quorum, in the meaning of the Constitution, was present; while others did not accept that interpretation, but claimed it was necessary to pass the amendment to meet revolution with revolution, feeling satisfied that the end justified the means.

IV. WAS THE RATIFICATION OF THE FIFTEENTH AMENDMENT BY THE GENERAL ASSEMBLY OF INDIANA CONSTITUTIONAL?

The question of the constitutionality of the ratification of the Fifteenth Amendment by the General Assembly of Indiana constitutes the last section of this paper. Much has been said and written on this question. I shall review the arguments both pro and con, and try to reach a conclusion.

The best and fullest argument in favor of the constitutionality of the question up for consideration has been offered by Senator Morton, and I shall therefore review his exposition carefully.[136]

Mr. Morton points out the fact that the resignation of members of the General Assembly to defeat the will of the majority occurred for the first time in 1869. Before that time the quorum had been broken by absence.[137] In the latter case, the absentees might be sent for and the quorum thus restored; not so in the case of resignations.

[134] *Brevier Reports*, XI, p. 241.

[135] *Ibid.*

[136] Indianapolis *Journal*, May 25, 1869, pp. 4 and 5.

[137] To prevent the breaking of a quorum by absence, a bill was passed by the General Assembly of 1867, making such action punishable by a fine of $1,000. The act reads: "Willful or intentional absence or refusal to vote on the part of any member, or to answer to their name on vote or roll-call with intent to delay or defeat legislation, shall be deemed guilty of misdemeanor and be fined $1,000." Approved February 7, 1867 (*Laws of Indiana*, 1867, p. 131).

Article IV, Section II, of our State Constitution says, "Two-thirds of each House shall constitute a quorum to do business." Article I, Section 5, of the United States Constitution says, "Each House shall be the judge of elections, returns and qualifications of its members, and a majority of each shall constitute a quorum to do business."

The question now comes up: What constitutes a House? According to Mr. Morton, clearly not a hundred, not fifty, respectively.[138] If action required that number, the General Assembly could seldom act; since there is hardly a day without some absences due to death, failure to elect, or failure to qualify. Vacancies caused by death or resignation are never filled without delay, so some time must elapse before all the members can be present. Mr. Morton said that if ten counties should fail to elect representatives, ninety members constitute the House, and two-thirds of these (sixty) is a quorum. If ten members were to die or resign, the result would remain the same. He maintained that the "House" meant the whole number of actual members.[139] He says that to pass a bill or joint resolution it takes a majority of all the members elected to each House.[140] This means fifty-one and twenty-six respectively. According to this, less than a majority can not transact any business, but the framers of the State Constitution certainly did not mean to give the minority the means of preventing legislation. There was no question in Mr. Morton's mind in regard to the legality of the ratification of the Fifteenth Amendment, since twenty-seven Senators and fifty-four[141] Representatives voted in favor of such ratification. He said the Fifteenth Amendment passed both as to the letter and the spirit of the Constitution; the only possible complaint that could be made was that the minority was not able to defeat the will of the majority.

The practice in Congress, according to Mr. Morton's exposition, was similar to the course adopted by the General Assembly of Indiana. In the Senate the majority of members who are left are recog-

[138]Indianapolis *Journal,* May 25, 1869.

[139]Had the Senate resolution read in Congress by Mr. Morton on March 15, 1869, been passed, there could be no doubt concerning the soundness of this argument. This resolution provided that a "majority of any State legislature shall be sufficient to ratify any amendment to the Constitution of the United States proposed by Congress; and the resignation or temporary refusal to act of the minority shall not affect the validity of such ratification by the majority." (*Globe,* 1st Session, 41st Congress, p. 63; Indianapolis *Journal,* March 16, 1869, p. 1, col. 1; *ibid.,* March 17, p. 4, col. 1.)

[140]Indiana Constitution, Article IV, Sec. 25.

[141]Mr. Morton said 55. *Brevier Reports,* XI, p. 240, says 54.

nized as a quorum. The Senate has a rule to that effect; the House has not, but recognizes the same principle. This construction was the only one that could keep the minority from bringing on a state of anarchy; and it was time to put an end to such action both in State and nation.

In this exposition, Senator Morton argues that the ratification of an amendment to the national Constitution differs from an act of legislation, because the duty to consider an amendment is imposed on the State by the nation, and a State Constitution cannot prohibit the consideration thereof. For that reason, if for no other, he believes that a majority of the members of a State legislature should be considered sufficient to pass it. Where the duty is imposed by Congress, the performance of it as imposed by the national government should be sufficient in the State.

An act of Congress of July 26, 1866, makes the following provisions concerning the election of United States Senators:[142] On the second Tuesday after the State legislature meets, each House shall vote for Senator; at 12:00 m. the next day both Houses shall meet to elect a Senator; a majority of all the votes of the joint assembly elects, provided that a majority of all the members elected to both houses are present and voting.[143] In Indiana seventy-six, probably all Representatives, might proceed to elect, and thirty-nine votes would be sufficient for election. Mr. Morton shows here that Congress has the power to regulate the election of United States Senators, and we may infer that it also has the power to say how constitutional amendments shall be ratified.

The Democratic view in regard to the constitutionality of the passing of the Fifteenth Amendment has been stated at various points in the previous chapter, and needs only to be mentioned. The

[142]Morton's exposition, Indianapolis *Journal*, March 25, 1869, p. 5.

[143]This Federal law covers the constitutional question raised in Indiana in previous controversies. In 1855 the two Houses of the General Assembly were of different politics and refused to go into a joint session to elect a United States Senator (Turpie *Sketches of My Own Times*, p. 176). The General Assembly of 1857 was Democratic on joint ballot, but the Republicans had a majority in the Senate. The Senate was unwilling to join the House in joint session for the purpose of electing United States Senators, so on February 4, 1857, the Democratic Senators joined the House of Representatives and Jesse D. Bright and Graham N. Fitch, both Democrats, were elected Senators. Both received 83 votes, a majority of all the votes of the General Assembly (Turpie, p. 176; *House Journal*, pp. 395-396.) The opposition claimed (1858) that "legislature" meant the concurrent action of both Houses, consequently Bright and Fitch had not been elected. The Democrats contended that the majority had the legal right to take such action. The Republican majority, the Democrats refusing to take part in the proceedings, elected Lane and McCarty to the Senate. The United States Senate seated Bright and Fitch (Turpie, pp. 177-179).

Democrats claimed that the amendment had not passed, because no quorum was present at the time the vote was taken. A statement given "To the People of Indiana of All Parties"[144] reviews the question and claims the amendment was voted on by less than a quorum. This appeal states that the vote in the House was 53[145] ayes, no nays, and 3 not voting; a total of 56. The same article claims the action of the Senate was not valid; for in order to have the records show a quorum present the following Senators who had resigned were counted: Messrs. Gifford, Carson, Smith, Sherrod, Lee; and Mr. Denbo, who was absent, was counted present. Mr. Smith had resigned and was also absent. The appeal adds that the "records were falsified to show a quorum by persons under oath and pretending to be Christian men."[146]

It seems that the Democratic State papers were unanimous in their opinion in regard to the so-called ratification of the Fifteenth Amendment in Indiana. They claim it was illegal. The Indianapolis *Sentinel,* Terre Haute *Journal,* and Jeffersonville *Democrat* protested against the action of the General Assembly.[147] Not all the Republican papers of Indiana were sure that the action of the legislature was legal. The Lafayette *Journal* was one that doubted the legality of the action.[148] The New York *Times* also considered the action illegal.[149] The *Daily Evening Mirror* (Republican) of Indianapolis prints the following:[150] "The following article from the Chicago *Evening Post,* an able and independent Republican newspaper, expresses our views exactly." These views are that there may be some question as to the legality of the action of the Senate, but that the action of the House certainly was illegal. The *Mirror* quotes the following as its opinion also: "The Fifteenth Amendment, ratified by the means chosen for the purpose in Indiana, would not be worth the parchment on which it is engrossed." The Richmond (Ind.) *Radical* says that the vote of Indiana may or may not be counted for the amendment; still it is sure of adoption. It ends its article with these words: "Glory Hallelujay!"[151]

In conclusion, I shall review the situation with the hope of being able to determine the legality of the action of the General Assembly

[144]Indianapolis *Sentinel,* May 15, 1869, p. 2, cols. 1 and 2.
[145]*Brevier Reports,* XI, p. 240, says there were 54 ayes.
[146]This article was signed by J. M. Hanna, J. R. Coffroth, and John S. Davis.
[147]Foulke, *Life of Morton,* II, pp. 114-116.
[148]*Ibid.,* p. 117.
[149]*Ibid.*
[150]*Daily Evening Mirror,* May 18, 1869, p. 1, col. 2.
[151]*Radical,* May 20, 1869, p. 2, col. 1.

of Indiana on the Fifteenth Amendment. The first question that comes up is: Did Congress have the right to propose the suffrage amendment in 1869? Both the Republican national platform of 1868 and the Republican state platform of the same year had plainly stated that the question of suffrage in the loyal States should be left to the States. We have a right to believe that the voters who supported these platforms held the same view. We may also take it for granted that the Democrats held the same view. Morally then, I claim, Congress was bound to leave the question to the States. Legally, Mr. Morton was right when he said that those planks expressed the opinion of the party on the suffrage question as the Constitution then stood, but that did not mean that at no subsequent time might they change it on that subject.[152] In answer to the first question, I will say that morally Congress did not have the right to propose the Fifteenth Amendment at that time; legally it could do so.

The second question to be considered is: Has the minority of a legislature the right to defeat the will of the majority? According to the underlying principle of democracy *it has not.* I believe that the framers of our constitutions, both national and State, did not intend to give to the minority in the respective legislative bodies the right to defeat the will of the majority by withdrawal or resignation. Yet, at several different times, this very act has been resorted to in Indiana. The Republicans withdrew from the General Assembly in 1865 to keep the Democrats from passing the Militia Bill.[153] How the minority defeated the will of the majority in the regular session of 1869, and either defeated or attempted to defeat it in the special session of the same year, has been fully discussed and needs no further comment. Again in 1871 a number of Representatives resigned as the only means of defeating the Apportionment Bill. This time thirty-four Republicans sent in their resignations to the Gov-

[152] *Globe,* 3d Session, 40th Congress, p. 861 (February 4, 1869).

[153] This General Assembly was composed of 27 Democratic, 21 Republican, and 2 Independent Senators; 60 Democratic and 40 Republican Representatives (*Daily State Sentinel,* Feb. 9, 10, 11 and 12, gives this list). The Militia Bill proposed to reserve to the people enrolled under it the right to choose company and regimental officers, and to give to the General Assembly the appointment of Major-Generals and Brigadier Generals (*Daily State Sentinel,* Feb. 28, 1863). The purpose of this bill was to tie the hands of Governor Morton. The *Daily State Sentinel* of March 2, 1863, says: "They [the Republicans] have either gone home or left for parts unknown. * * * The Republican members of the House have absquatulated." This same paper says: "Whenever the minority shall aim to overturn legislation by acts of revolution, they will place themselves in the same category with Mr. Jefferson Davis and his confederates in crime against Constitution and laws." This withdrawal of the Republican Representatives left the State without the necessary appropriations.

ernor, on February 22.[154] Republicans claimed that these members resigned to keep the Democrats from redistricting the State in such a way that the Republicans could never again have a majority in the General Assembly.[155]

The third, last, and main question is: What constitutes a quorum in the General Assembly of Indiana? The Speaker of the House ruled, shortly before the vote was taken, that for legislative purposes he had always maintained that sixty-seven constituted a quorum, but that for the consideration of the Fifteenth Amendment a quorum was present.[156] Neither law nor precedent was produced to back up this statement.

The Senate did not care to go on record as passing the Fifteenth Amendment without the claim of a quorum. There may be some question as to whether a quorum was present when that measure was voted on, but the record left by that body shows a quorum present.[157] Possibly this record was padded to show the requisite number, and that body did not care to proceed with less than thirty-four names on the record. If this number was necessary to proceed with the business of the Senate, it is hard to see how the House could take legal action with less than sixty-seven members present.

The ruling of the Speaker that a bare majority might pass a constitutional amendment, while for legislative action two-thirds of all the members (67) was necessary, is too weak to stand. If this view was correct, why should Mr. Morton have made the attempt to have a Federal statute passed to that effect? If such action was legal, why should it require a law to make it so?

When the seventeen Senators and thirty-seven Representatives resigned on March 4, 1869, the Governor and the Republicans as well as the Democrats agreed that the quorum was broken. When the Republicans withdrew from the General Assembly in 1863, Republicans and Democrats agreed that the General Assembly could take no action. When in 1871 thirty-four Republican Representatives resigned, the wheels of the legislative machinery stopped. Why then should the House of fifty-seven members proceed to pass

[154]*Senate Journal*, 1871, p. 745; Indianapolis *Journal*, Feb. 24, 1871, p. 4, col. 1. The resignation of these thirty-four members left the House without a quorum. If there were no vacancies, the House was reduced to sixty-six—one less than a quorum.

[155]Indianapolis *Journal*, Feb. 24, 1871, p. 4, col. 1.

[156]The record shows 57 present when the vote was taken.

[157]The term "quorum" as here used means two-thirds of the full number of Senators, or 34.

the Fifteenth Amendment?[158] One answer is, that this was the only way that it could be passed.

Viewing the question in the light of the spirit of the law, I should say that the Fifteenth Amendment was legally passed by the General Assembly of Indiana. If we apply the letter of the law to our question, a thing which has been done too much in the past and is still defeating the good intentions of many a measure, I should say that the Fifteenth Amendment was never ratified by the General Assembly of Indiana.

The best argument, in my opinion, that the Republicans could find for taking a vote on the amendment was that it was meeting revolution with revolution. In the letter of the law the Democrats certainly had the right to resign; but, I believe, the framers of our Constitution did not intend to put into anybody's hands such a dangerous weapon. Morally, then, they were bound to retain their seats, and make the ratification of the amendment possible; legally, they were under no obligation to take part in the work. For the same reason the Republican members had no moral right to withdraw in 1863 or to resign in 1871; but there was no law to keep them from doing so. All were by duty bound to remain, and let the majority reap the honor or share the blame that might come from their own wise or foolish action. True democracy is founded on this principle.

[158]Goodrich and Tuttle (*History of Indiana*, p. 250), in commenting on the statement of the chair that there was a quorum of *de facto* members present, claim that this decision was afterward substantially sustained but the Supreme Court case and authority are not cited, so the reader is permitted to take this statement at his own estimate.